

REMARKS

Claims 9 to 40 are pending. Claims 9, 13, 14, 15 and 35 have been amended. New Claims 37 to 40 have been amended. New Claims 37 to 40 have been added and are supported by original Claims 7 and 8. Support for the amendment in Claims 9 and 13 to 15, where cup extends outward from the plane of the cover part 16, is found in Figures 1 to 4 and on page 4, line 18, to page 5, line 14, of the specification.

Claims 13 to 15, 22, 23, 27 and 31 have been objected to as being dependent upon a rejected base claim. The Office Action stated that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for indicating the allowability of the subject matter of such claims. However, applicants believe that all of the pending claims are allowable. Claims 13 to 15 have each been placed in independent form. Amended Claim 35 and Claims 37 to 40 are each dependent upon one of the allowable now independent Claims 13 to 15.

Claims 9, 10, 16 to 19, 24, 25, 28 to 30 and 32 to 36 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Tannenbaum '793 (U.S. Patent No. 5,150,793) in view of Leblong (U.S. Patent No. 5,758,774). Applicants traverse this rejection.

Applicants' claimed invention involves a child-safe packing for tablets, capsules and similar pharmaceutical products. The child-safe packing includes the blister pack (12) with at least one cup (22) to hold the tablets (18) sealed by means of the push-through cover film (24), in which packing the blister pack (12) is arranged between the base part (14) and the cover part (16) of the outer pack (10). The cover film (24) of the

blister pack (12) faces towards the base part (14). The base part (14) has the removal opening (38). The cup (22) of the blister pack (12) is movable and guided in the opening slot (30) in the cover part (16) and can be brought over the removal opening (38) in the base part (14) to push through the cover film 24 and remove the tablets (18). The opening slot (30) has the width which is less than the dimension of the shoulder (26) of the cup (22) but greater than the dimension of the cup (22). The tear-off strip (32) at least partly covers the opening slot (30) and is separable by way of the weakening line (36) that is connected to the cover part (16).

Figures 2,3, 5 and 9 shows that the dimension of shoulder (26) of the cup (22) transverse to the opening slot (30) is greater than the width of the opening slot (30) and the dimension of cup (22) transverse to opening slot (30) is less than the width of the opening slot (30).

While applicants' packing are child-safe, it can easily be opened by the elderly. The opening of applicants' packing requires a combination ability in the sense that the user must perceive that, in order to press the tablets through the film sealing the top of the cup, the cup must be brought over the removal opening.

The Office Action stated that Tannenbaum '793 teaches all of the limitations of Claim 9 except a tear off strip which partly covers the opening slot. Applicants disagree with this statement as Tannenbaum '793 does not teach all of the other limitations of Claim 9.

On page 2 of the Office Action the Examiner is of the opinion that Tannenbaum '793 teaches all the limitations of Claim 9 except a tear-off strip that partly covers the opening slot, whereby he apparently defined the open top pat of the housing 32 as the

opening slot. The Examiner then further argues that it would have been obvious to incorporate a tear-off strip as disclosed by Leblong for covering opening slots across the central opening of the housing 32 of Tannenbaum '793 for the purpose of protecting the blister pack against tampering or undesirable movement before manipulation by the intended user.

When comparing Figs. 1 and 2a in Tannenbaum '793 reference and Figs. 1 and 2 of the present application and further imagining that in Tannenbaum '793 the tear-off strip of Leblong would cover the opening slot which is the open top part of the housing 32, it is evident that the arrangement of the tear-off strip and the opening slot of the present invention is not the same as it would be when combining Tannenbaum '793 and Leblong, and consequently the function of the tear-off strip and the opening slot is clearly not the same. In the present invention cup 22 of the blister pack 10 protrudes outward from the plane of the cover part 16. The tear-off strip 32 is part of the cover part 16 and consequently cup 22 protrudes also outward from the plane of tear-off strip 32. When the tear-off strip 32 is separated from the cover part 16, opening slot 30 is created thereby defining a guide for the cup 22 which is moved along the opening slot 30 and brought over the removal opening 38 in the base part 14.

In the packing according to the combination of Tannenbaum '793 and Leblong the cups or blisters 22 are covered by the tear-off strip and consequently do not protrude outward from the plane of the cover part of the tear-off strip. Also, when the tear-off strip has been separated from the cover part, thereby created opening slot does not function as a guide for the cups or blisters.

Applicants content that the opening mechanism of the packing of Claim 9 of the present invention cannot be derived in an obvious manner by simply combining Tannenbaum '793 and Leblong.

Claim 9 requires that the opening slot has a width that is less than the dimension of the shoulder of the cup. Tannenbaum '793 does not teach or suggest this claimed limitation. Referring to applicants' Figures 1 to 3 and 5, the dimension of shoulder (26) of the cup (22) is shown.

The Office Action stated that, in Tannenbaum '793 the opening slot is the open top part of the housing 32, which reads on the claimed outer pack 10. Applicants traverse this statement. As Tannenbaum '793 does not disclose an essentially circular shoulder for its blister(s), Tannenbaum '793 cannot read on applicants' claimed blister pack (12). [Outer pack (10) is that of Tannenbaum '793, so such statement is further not relevant.]

The Office Action stated that Leblong teaches tear off strips 26,27 which cover the opening slots. Applicants traverse this statement as being factually incorrect as it is factually incomplete.

Tannenbaum '793 requires a housing surrounding at least part of its blister-type container, and, secondly, a biasing means for biasing the container. Tannenbaum '793 states:

"The present invention is a device for inhibiting removal of an article from a blister-type container having at least one blister. The device includes a housing surrounding at least a portion of the container sized to permit movement of the

container between first and second positions. The housing has a base positioned facing the blister-type container with at least one base opening in registry with the blister when the container is in the first position. The base opening is sized to permit passage of the article therethrough. The device also includes a biasing member for biasing the container toward the second position. When the container is in the second position, the base of the housing is positioned to inhibit removal of the article from the container. When the container is moved by an individual against the bias of the biasing member to the first position, the blister is in registry with the base opening to permit removal of the article by applying pressure to the outside surface of the blister to force the article to rupture the container and pass through the base opening." [Emphasis Supplied]

[Abstract]

"The housing also has biasing means for biasing the container toward the second position. When the container is in the second position, the base of the housing is positioned facing the second side of the second sheet to inhibit removal of the article from the container. When the container is moved by an individual against the bias of the biasing means to the first position, the blister is in registry with the base opening to permit removal of the article by applying pressure to the outside surface of the blister to

force the article to puncture the second sheet and pass through the base opening." [Emphasis Supplied] [Col. 1, line 60, to col. 2, line 3]

As illustrated in Figures 2a and 2b of Tannenbaum '793, if the biasing means (48, 52m 54m 58) of Tannenbaum '793 is removed, the result lies outside of the disclosure and invention of Tannenbaum '793 with the destruction of the very invention of Tannenbaum '793, and the invention of Tannenbaum '793 fails and will not work. If part of housing 38 is removed, the biasing means does not provide the necessary biasing and the Tannenbaum '793 invention fails. If housing 46 on the end is removed, there is nothing to prevent movement in that direction of blister-type container 14 due to the biasing means. If fact, merely pulling on container 14 would allow removal of the biasing means out of housing 38 which means easy access to children to push the articles 12 out of blisters 22 (or to easily puncture sheet 24 for access to articles 12 in blisters 22). The very core of the Tannenbaum '793 invention of being child resistant would be destroyed. Even the partial removal of housing 38 would leave abutment 47 to be easily raised (or forced upwards by insertion of fingers) in its central portion. But that much exertion would not be necessary, as a child could easily pull on end 50 of container 14, with insufficient restraint by abutment 47 (that would have no lower attachment except on its two ends as container 14 freely slides in part under it), thereby pulling out at least some of the blisters 22 of container 14 and gain access to the contents of such blisters 22 (push throughs). This result would also destroy the child resistant feature of the Tannenbaum '793 invention.

In Leblong the so-called child resistant feature is a series of tear slits 27 on the sides of blister package and individually directed towards individual blisters 15. Incorporation of such side tear slits in the Tannenbaum '793 blister package would allow a child to tear a path to a blister 22 of Tannenbaum '793 and thereby destroy the child resistant feature of Tannenbaum '793 (even when the success of the child of tearing such path was random or infrequent). Note that the tear slits 27 of Leblong go through all of the layers of blister package 10. One ordinarily skilled in the art would look at the so-called child resistant feature of Leblong and readily discard Leblong as being a disclosure that would destroy the child resistant feature of Tannenbaum '793. All of the disclosure of the rejection references must be considered under Section 103(a) and the Examiner has not provided any facts and/or reasons that would cause one ordinarily skilled in the art to ignore tear strips 27 in the search for applicants' claimed invention.

The reality is that the Leblong invention is a blister package that has, and requires, structural features that allow it to be converted from a child-resistant blister package to a nonchild-resistant blister package. This mandatory conversion means/structure of Leblong will destroy the very invention of Tannenbaum '793. One ordinarily skilled in the art, after reviewing both rejection references, would discard Leblong and not combine Tannenbaum '793 and Leblong in the search for applicants' claimed invention. There is no motivation of record to combine the two rejection references, in fact, the opposite is the case.

All of the teachings of the rejection references must be considered under Section 103(a). Removal of the mandatory structure/feature from Leblong for converting the

Leblong blister package from child resistant to nonchild-resistant would destroy the very stated and disclosed invention of Leblong.

Leblong states:

"A blister package (10) which can be converted from child-resistant to nonchild-resistant at the user's discretion.

A slit (21) is provided in each package for enabling access to an individual blister and a section (22) of 2 z the package can be removed to provide access to a tearaway perforated strip for providing access to a row of blisters. Alternatively, a tearaway perforated strip (30) can also be provided for enabling access to an individual blister." [Emphasis Supplied] [Abstract]

"Therefore, there is a need for a drug packaging which can be converted from being child-resistant, in which certain prescribed steps must be performed in order to obtain access to the drug, to nonchild-resistant, wherein access to the packaged drug is easily obtained." [Emphasis Supplied] [Col. 1, lines 48 to 52]

"It is, therefore, an important object of the present invention to provide a drug package construction which enables the package to be converted from child-resistant to nonchild-resistant with a minimum amount of effort by the user." [Emphasis Supplied]

[Col. 1, lines 55 to 58]

"... a convertible child-resistant package of the present invention," [Emphasis Supplied] [Col. 2, lines 14 and 15]

"... converted into nonchild-resistant;" [Emphasis Supplied]
[Col. 2, line 17]

"FIG. 8 is a perspective view showing a second embodiment
of a child-resistant package of the present invention showing the
child-resistant and nonchild-resistant features of the package;"
[Emphasis Supplied] [Col. 2, lines 29 to 32]

"...the convertible child-resistant blister package 10 of the
present invention...." [Emphasis Supplied] [Col. 2, lines 38 and 39]

"A convertible child-resistant package comprising ... and
a detachable section provided in said first, second and third
sheets oriented normal to said perforated strip and contacting an
end thereof." [Emphasis Supplied] [Claim 1, lines 1 to 16]

"A convertible child-resistant package ... comprising ...
and a detachable section provided in said first, second, third and
fourth sheets for providing access to a row of blisters, said
perforated strip being provided directly underneath said row of
blisters and extending throughout the length thereof and said
detachable section being oriented normal to said perforated
strip and contacting an end thereof." [Emphasis Supplied]

[Claim 2, lines 1 to 19]

So Leblong teaches the mandatory inclusion of a detachable end section that allows entry to the end of its perforated cover strip. The inclusion of such a detachable end section, as mandatory to Leblong, in Tannenbaum '793 would result in the removal

of all or part of the housing at either end of the blister-type container of Tannenbaum '793, as explained above; and would result in the destruction of the Tannenbaum '793 invention and render it so that it is not child resistant.

The Examiner has not factually established in the record a prima facie showing of obviousness of applicants' claimed invention. The Examiner has not even shown motivation for combining the rejection references since, for example, one would destroy the invention of the other.

Leblong states:

"As shown in FIG. 2, the detachable section 22 is removed from the remainder of the package 10 by grasping the package 10 and the detachable section 22 on opposite sides of the perforated line 25 and pulling in opposing perpendicular directions with respect to the plane of the package. A tear would then ensue which separates the detachable section 22 from the remainder of the package 10. Alternatively, the detachable section 22 can be removed from the remainder of the package 10 by cutting the package along the line of demarcation 25."

"The removal of the detachable section 22 from the package 10 exposes the end 26 of a longitudinally extending perforated strip 27 provided in the third and fourth layers 17, 20. The perforated strip 27 is provided directly beneath and completely encompasses a row of blisters 15 and extends throughout the length of the row of blisters. The end 26 of the perforated strip is

not sealed to the second layer 12 which thereby enables the user
to easily grasp the perforated strip end 26 and commence the
removal of the perforated strip 27 from the back side of the
package 10."

"As shown in FIGS. 2 and 4, by pulling the perforated strip end 26 along the length of the rows of blisters, the perforated strip 27 separates from the rest of the package 10 and exposes the rupturable second layer 12. When the perforated strip 27 is completely removed from the back side of the package 10, the user is thereby given easy access to an entire row of blisters." [Emphasis Supplied] [Col. 4, lines 29 to 56]

Children are often used to tearing paper, cardboard, plastic sheets, and the like along tear slits and perforated tear lines to access toys, food, etc., and using scissors to cut along dashed cut lines, perforated lines and the like. This is illustrated by children opening clear plastic bags along tear lines to get to small toys given out by fast food establishments and the like, by children cutting out paper dolls, soldiers, etc., using scissors, and so on.

Webster's Seventh New Collegiate Dictionary, (1963), states:

"child... children... 2 a a young person of either sex esp. between infancy and youth" [Page 144]

The Office Action stated that it would have been obvious in view of Leblong to one of ordinary skill in the art at the time the invention was made to incorporate a tear off strip across the central opening of the housing 32 of Tannenbaum '793 for the purpose of protecting the blister pack against tampering or undesirable movement

before manipulation by the intended user. Applicants traverse this statement. Use of Leblong means inclusion of the tear slits and detachable end section of Leblong in Tannenbaum '793 which would destroy the Tannenbaum '793 invention with the result of a blister-type container that was not child resistant. (Leblong would also destroy applicants' invention.) The Examiner has not provided any motivation for combining Tannenbaum '793 and Leblong.

The Office Action stated that, regarding Claim 10, Leblong's weakening line is a perforation line, as is clearly seen in Figs. 1 and 2. Applicants traverse the attempted implication. Since independent Claim 9 is not obvious over the combination of Tannenbaum '793 and Leblong, none of its dependent claims are obvious.

The Office Action stated that, regarding Claims 16 to 19, Tannenbaum '793 teaches a spring element, taught in column 5, beginning at line 4; and that the spring element is part of the blister pack, as is seen in Fig. 3. Applicants traverse this statement. Since independent Claim 9 is not obvious over the combination of Tannenbaum '793 and Leblong, none of its dependent claims are obvious.

The Office Action stated that, regarding Claims 24, 25 and 28, the "single cut" taught by Tannenbaum '793 comprises the open top portion. Applicants traverse this statement. Since independent Claim 9 is not obvious over the combination of Tannenbaum '793 and Leblong, none of its dependent claims are obvious.

The Office Action stated: that, regarding Claims 29, 30 and 32, the joining of two of Tannenbaum 793's packages side to side is clearly well within the capability of one of ordinary skill in the art; and that it would have been obvious to one of ordinary skill in the

art at the time the invention was made to combine two of Tannenbaum '793's packages so that they were mirror symmetrical for the purpose of selling the dispensed items in greater quantities. Applicants traverse this statement as being mere forbidden hindsight. Section 103(a) requires facts, not speculation.

The Office Action stated: that this argument applies similarly to the limitations claimed in Claims 33 to 36; and that it would be obvious to put several of Tannenbaum '793's packages together so that they were separable by a perforated strip, for the reason given above. Applicants traverse this statement as also being only forbidden hindsight. Section 103(a) requires facts in the record, not speculation.

The Examiner has not carried his burden of proof and has not factually established in the record a *prima facie* showing of obviousness.

This rejection should be withdrawn.

Claims 11, 12, 20, 21 and 26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Tannenbaum '793 as modified regarding Claim 9 and further in view of Official Notice. Applicants traverse this rejection.

Note that this rejection does not recite inclusion of Leblong as part of it, so Leblong is not part of this rejection.

The Official Action stated that Tannenbaum '793 does not teach "a tear off strip which covers the opening slot." The so-called Official Notice also does not teach such a tear off strip. Therefore, even if Tannenbaum '793 and the Official Notice can be combined in the search for applicants' claimed invention, the result is still not applicants' claimed invention (so it is not obvious over the attempted combination of Tannenbaum '793 and the Official Notice).

Even if Leblong were part of this obviousness rejection, it would still fail as shown above.

The Office Action stated that Tannenbaum '793 as modified regarding Claim 9 teaches all the limitations of Claims 11 and 12 except the removal opening 36 [38?] being covered by a push-through seal. This statement does not make sense because, as admitted by the Examiner, Tannenbaum '793 does not teach a tear strip covering the opening slot. Leblong is not recited as part of this rejection. This rejection fails on its face.

The Office Action stated that the Official Notice is taken that push-through seals are old, obvious and well known in the packaging arts. Applicants traverse this statement and traverse this attempted Official Notice. Push-through opening seals of removal slots have not factually been shown to be old, obvious and well known in the packaging arts. The attempted Official Notice is further so broad as to be meaningless under Section 103(a). Accordingly, applicants traverse this attempted Official Notice. Applicants request that the Examiner drop this attempted Official Notice or to support it factually by his personal declaration and/or citation of a reference factually supporting it. Furthermore, the broad scope of the attempted Official Notice is not addressed to the specific limitations of Claims 11 and 12.

The Office Action stated that it would have been obvious in view of the Official Notice taken to one of ordinary skill in the art at the time the invention was made to cover openings 36 of Tannenbaum '793 with push-through seals in order to better protect the integrity of the entire package. Applicants traverse this rejection. The attempted Official Notice has been challenged for good reason so it is meaningless until

factually supported. The Examiner has not factually shown motivation to combine Tannenbaum '793 and the attempted Official Notice. The attempted rejection does not include Leblong so it is also defective on this ground alone.

When applicants use a push-through opening seal on a removal opening (38), that means that the tablet would have to be pushed through two separate push-through opening seals (see also push-through opening seal 24 over blister pack 12). None of the rejection references teach or suggest this structure limitation so the Examiner's use of the attempted Official Notice is mere forbidden hindsight. Factually support it in the record, or drop it.

The Office Action stated that Tannenbaum '793 teaches the limitations of Claims 20, 21 and 26 as noted above. Applicants traverse this statement for the reasons set out above.

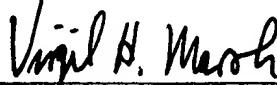
This rejection should be withdrawn.

Reconsideration, reexamination and allowance of the claims is requested.

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Respectfully submitted,

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